

Media Law Notes

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Law and Policy Division, AEJMC

Summer 2010

Head Notes

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All eyes this summer are on the unfolding tragedy on the Gulf Coast. As BP and the federal government struggle to cap the gushing oil, free press advocates have witnessed another disaster, this one manmade and all too often repeated in story after story: draconian controls placed on the press, limiting access to the scene of the story.

The Associated Press reported on July 1 that

the Coast Guard on Tuesday had established a "safety zone" of more than 300 feet, but reduced the distance to 20 meters – 65 feet. In order to get within the 65-foot limit, media must call the Coast Guard captain of the Port of New Orleans, Edwin Stanton, to get permission.



Charles Davis

Coast Guard Adm. Thad Allen, the national incident commander for the oil spill, said in a press briefing that it is "not unusual at all" for the Coast Guard to establish such a safety zone, likening it to a safety measure that would be enacted for "marine events" or "fireworks demonstrations" or for "cruise ships going in and out of port."

The problem is that none of these analogies come close to fitting the situation at hand, a manmade disaster scene of global newsworthiness.

Photographers have had similar problems viewing the oil's impacts from the air. Photographer Ted Jackson of The New Orleans Times-Picayune was trying to charter a flight with Southern Seaplane in late May to photograph oil coming ashore on Grand Isle, but the pilot was told that no media flights could go below 3,000 feet, due to restrictions from the Federal Aviation Administration.

And from a practical standpoint, the 65-foot safety zone could serve to block photographers and reporters from accessing some waterways altogether. Boom is often placed along the water's edge in some bayous that are less than 20 meters wide.

Journalists covering the oil spill have been yelled at, kicked off public beaches and islands and threatened with arrest in the nearly three weeks

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Focus on First Amendment works at CWU

By Cynthia Mitchell
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The First Amendment doesn't include the right to wear tank tops – the "right to bare arms," as one of my students wrote on the first day of our department's new required "Law & Ethics of the First Amendment" class.

Nor does it cover the right to vote or the right to pursue happiness, as two others ventured.

Thankfully, a few class periods later, even the students who were stabbing blindly pretty much had the six freedoms down, including both of the religious clauses, though a couple listed the freedoms of petition and assembly as "freedom to gather" and "freedom to protest."

That was the minimum we were hoping for when our Communications Department at Central Washington University decided a few years ago that our curriculum overhaul should include a more intense focus on the First Amendment.

The result is a 200-level, four-credit class that discusses the First Amendment and its exceptions in detail. Students have to get a B-

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2010 research paper competition a success

By David Cuillier
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This year's research paper competition was more competitive than ever. In all, 78 papers were reviewed and 32 accepted, a 41 percent acceptance rate. In 2009, the division accepted 45 percent of the 69 papers and in 2008 we accepted 45 percent of the 71 submitted papers. The Law & Policy Division is one of the most competitive divisions in AEJMC, and the quality shows in the outstanding papers to be presented in Denver.

In addition to having a high number of papers, we were fortunate to have a high number of reviewers. Because of the 81 volunteer judges, nobody had to

review more than three papers and some were assigned just one or two papers. In appreciation for their work, reviewers will be listed in the conference program and they also were given priority for serving as moderator or discussant at conference sessions.

After each paper was scored by three blind reviewers, I calculated z-scores to determine the rankings. The selected papers clustered into thematic panel sessions: free expression, press rights, freedom of information, Internet issues and defamation. Papers that didn't fit into the topics will be presented in the scholar-to-scholar session, which is a great opportunity to talk one-on-one with authors.

Top paper authors will be honored at the division business meeting 6:45 p.m. Thursday, Aug. 5. They are noted by asterisks in the conference schedule below.

Law & Policy Conference Schedule

Tuesday, August 3, 1-7 p.m.

A Crash (and Refresher) Course in Legal Research Methods: Tips and Trends from Legal Research Experts

Panelists will include law librarians who specialize in federal and state statutes, case law, legislative history, and other key parts of legal research. They will focus their presentations on media law specifically. Both Westlaw and Lexis research representatives are also expected to attend to teach attendees how to use their on-line legal research tools, though much of the session will be devoted to free databases. Eric Easton and Amy Gajda, who have both taught legal research, will be moderators and teaching assistants. To register, contact Amy Gajda at agajda@illinois.edu

Wednesday, August 4

8:15 am to 9:45 a.m.

Visual Communication and Law and Policy Divisions, PF&R Panel Session: Navigating the New World of Copyright

Moderating/Presiding: Jack Zibluk, Arkansas State.

Panelists:

Open Source Publishing:

Margo Berman, Florida International, and Christine Burrough, Cal-Fullerton

The Digital Millennium Copyright Act:

Susan Zavoina, North Texas

Usher v. Orbis and Freelancer's Rights:

Loret Gvnicki-Steinberg, RIT

Fair Use:

Kathy Olson, Lehigh

Law & Policy Conference Schedule (continued)

Wednesday, August 4 (continued)

10 to 11:30 a.m.

Law and Policy and History Divisions, Research Panel Session: Criminal Libel: A 15th Century Crime for the 21st Century

Moderating/Presiding: Jane E. Kirtley, Minnesota

Panelists: Kathy Roberts Forde, South Carolina
Tom Mink, publisher, The Howling Pig, and plaintiff, *Mink v. Suthers*
Steven D. Zansberg, Levine Sullivan Koch & Schulz, L.L.P., Denver, CO
Don Quick, District Attorney, 17th Judicial District, Brighton, CO

11:45 a.m. to 1:15 p.m.

International Communication and Law and Policy Divisions, Teaching Panel Session: Journalism and Mass Communication and Law in Asia and the Pacific

Moderating/Presiding: Kyu Ho Youm, Oregon

Panelists: Doreen Weisenhaus, Hong Kong
Seung-Mok Yang, Seoul National
Ann Cooper-Chen, Ohio
Eric Loo, Wollongong

1:30 to 3 p.m.

Law and Policy and Scholastic Journalism Divisions, PF&R Panel Session: Federal News Media Shield Law: To Be or Not to Be

Moderating/Presiding: Edward L. Carter, Brigham Young

Panelists: RonNell Andersen Jones, Brigham Young
Toni Locy, Reynolds Professor of Legal Reporting, Washington & Lee; former reporter, USA Today
Anthony Fargo, Indiana
Frank LoMonte, executive director, Student Press Law Center

Thursday, August 5

7 to 8 a.m.

Business Session: Outgoing Executive Committee Meeting

8:15 to 9:45 a.m.

Refereed Paper Research Session: Free Expression Isn't Free: The State of Speech Yesterday and Today

Moderating/Presiding: Kenneth Creech, Butler

"When Even the Truth Isn't Good Enough: Confusion by the Courts Over the Controversial False Light Tort Threatens Free Speech," Sandra Chance and Christina Locke, Florida

"The Framers' First Amendment: Originalist Citations in U.S. Supreme Court Freedom of Expression Opinions," Derigan Silver, Denver (continued)

Law & Policy Conference Schedule (continued)

Thursday, August 5 (continued)

8:15 to 9:45 a.m.

Refereed Paper Research Session: Free Expression Isn't Free: The State of Speech Yesterday and Today (continued)

"The "Attack" Memorandum and the First Amendment: Adjudicating an Activist Role for Business in the Marketplace of Ideas," Robert Kerr, Oklahoma

"One Click to Suicide: First Amendment Case Law and its Applicability to Cyberspace," Christina Cerutti, Boston*

"Internet Service Provider's Liability for Defamation: South Korea's Balancing of Free Speech with Reputation," Ahran Park, Oregon

Discussant: Kyu Ho Youm, Oregon

* Second-Place Student Paper

10 to 11:30 a.m.

AEJMC Elected Standing Committee on Professional Freedom and Responsibility, Plenary Panel Session: First Amendment Rights in Crisis?

Moderating/Presiding: Sandra Chance, Florida

Speakers: Greg Moore, editor, Denver Post
John Montgomery, news operations manager, KCNC, Denver
Lynn Kimbrough, communications director, Denver District Attorney's Office
Dane S. Claussen, Point Park
Kyu Ho Youm, Oregon
Sandra Chance, Florida

2010 First Amendment Award presentation: Nat Hentoff, syndicated columnist for United Media, former columnist for The Village Voice (via video feed)

1:30 to 3 p.m.

Law and Policy's Scholar-to-Scholar Session

24. "Implications of Copyright in the Context of User-Generated Content and Social Media," Amber Westcott-Baker and Rebekah Pure, California Santa Barbara
25. "*Fairey v. AP*: Is the "Obama Hope" Poster a 'Fair Use' or a Copyright Infringement?" Laura Hlavach, Southern Illinois, Carbondale
26. "A Web of Stakeholders and Strategies in the Digital TV Transition," Dong-Hee Shin, Sungkyunkwan University
27. "The Impact of Competition on Universal Service in Korea: A Case Study," Sung Wook Kim, Seoul Women's and Krishna Jayakar, Pennsylvania State
28. "Network Neutrality and Over the Top Content Providers," Rob Frieden, Pennsylvania State
29. "Plaintiff's Status as a Consideration in Misrepresentation and Promissory Estoppel Cases Against the Media." Jasmine McNealy, Louisiana State
30. "Disciplining the British Tabloids: *Mosley v. News Group Newspapers*," Stephen Bates, Nevada, Las Vegas

Discussant: Roy Moore, Middle Tennessee State

Law & Policy Conference Schedule (continued)

Thursday, August 5 (continued)

3:15 to 4:45 p.m.

Law and Policy and Visual Communication Divisions, PF&R Panel Session: Is the Communications Decency Act Protecting Indecency?

Moderating/Presiding: William H. Freivogel, Southern Illinois at Carbondale

Panelists: Steven D. Zansberg, First Amendment lawyer, Levine Sullivan Koch & Schulz, L.L.P., Denver, CO;
author of articles on Roommates.Com and Barnes v. Yahoo!
Jane E. Kirtley, Minnesota
Laura Hlavach, Southern Illinois at Carbondale; formerly lawyer at Jackson & Walker, Dallas, TX
M. Lorraine Ford, product counsel, Google Inc.

6:45 to 8:15 p.m.

Law and Policy Division: Members' Meeting

Friday, August 6

7 to 8 a.m.

Business Session: Incoming Executive Committee Meeting

8:15 to 9:45 a.m.

Law and Policy and International Communication Divisions, Research Panel Session: Freedom of Information: An International and Comparative Perspective

Moderating/Presiding: Kyu Ho Youm, Oregon

Panelists: Christopher P. Beall, Levine Sullivan Koch & Schulz, Denver
Martin Halstuk, Pennsylvania State
Doreen Weisenhaus, Hong Kong
Nikhil Moro, North Texas

1 to 3 p.m.

Off-site Tour: Tenth Circuit Courthouse Tour

Moderating/Presiding: Derigan Silver, Denver

As part of the AEJMC Annual Convention, the Law and Policy Division will be hosting a guided tour of the Byron R. White U.S. Courthouse, home of the United States Court of Appeals for the Tenth Circuit, and a question and answer session with current Tenth Circuit judges. Located a ten minute walk from the conference hotel, the Neo-Classical Courthouse was completed between 1910 and 1916 and listed in the National Register of Historic Places in 1973. In 1994, it was renamed in honor of U.S. Supreme Court Justice Byron R. White (1917-2002) a native of Fort Collins, Colorado. After a 30-45 min tour of the Courthouse, guided by the clerk of the court and her staff, there will be a 45 minute to one hour question and answer session with some of the judges who sit on the Tenth Circuit. Pre-registration is required. Contact Derigan Silver (Derigan.Silver@du.edu) to register or for more information about the tour.

Law & Policy Conference Schedule (continued)

Friday, August 6 (continued)

3:30 to 5 p.m.

Law and Policy and Advertising Divisions, Research Panel Session: Regulating Tobacco Advertising in the Current Constitutional Landscape: Thirty Years Post-Central Hudson

Moderating/Presiding: Anthony Fargo, Indiana

Panelists: Clay Calvert, Florida
 Michael Hoefges, North Carolina at Chapel Hill
 Peggy Kreschel, Georgia
 Jodi Radke, regional advocacy director, Rocky Mountain/Great Plains Region,
 Campaign for Tobacco Free Kids

5:15 to 6:45 p.m.

Scholastic Journalism and Law and Policy Divisions, PF&R Panel Session: State Laws Protecting Student Free Expression

Moderating/Presiding: Mark Goodman, Kent State

Panelists: Mike Farrell, director, Scripps Howard First Amendment Center, Kentucky
 Jack Kennedy, president, JEA; adviser, Highlands Ranch (CO) HS
 Carrie Faust, Smoky Hill High School adviser; president, Colorado High School
 Press Association
 Patricia Pascoe, former Colorado state senator who was a primary sponsor of the bill

Saturday, August 7

8:15 to 9:45 a.m.

Refereed Paper Research Session: Law of the Press: Legal Challenges for Newspapers and Journalists

Moderating/Presiding: Tim Vos, Missouri

“Every Picture Tells A Story, Don’t It? Wrestling With The Complex Relationship Among Photographs, Words & News-worthiness In Journalistic Storytelling,” Clay Calvert, Florida

“Obama Administration Lifts the Dover Ban: Is the New Policy on Press Access Constitutional?” Jason Zenor, South Dakota

“The Associated Press as Common Carrier?” Stephen Bates, Nevada, Las Vegas*

“Charting The Right to Publish and the Right to Privacy: Reconciling Conflicts Between Freedom of Expression and the Disclosure of Private Facts,” Erin Coyle, Louisiana State

“Balancing Statutory Privacy and the Public interest: A Review of State Wiretap Laws as Applied to the Press,” Jasmine McNealy, Louisiana State

Discussant: Anthony Fargo, Indiana-Bloomington

* Third-Place Faculty Paper

Law & Policy Conference Schedule (continued)

Saturday, August 7 (continued)

10 to 11:30 a.m.

Refereed Paper Research Session: Partly Cloudy: Threats and Opportunities in Freedom of Information

Moderating/Presiding: Nancy Cornwell, Ithaca

"Evaluating Public Access Ombuds Programs: An Analysis of the Experiences of Virginia, Iowa and Arizona," Daxton Stewart, Texas Christian*

"Conceptualizing the Right to Environmental Information in Human Rights Law," Cheryl Ann Bishop, Quinnipiac

"The Constitutional Right-to-information on the Individual Level," Kathryn Blevins, Pennsylvania State

"Avoiding the Prisoners' Dilemma: Economic Development and State Sunshine Laws," Aimee Edmondson, Ohio and Charles Davis, Missouri

"Public Access to Criminal Discovery Records: A Look Behind the Curtain of the Criminal Justice System," Brian Pa-fundi, Florida Levin College of Law

Discussant: Kathleen Richardson, Drake

* Second-Place Faculty Paper

11:45 a.m. to 1:15 p.m.

Refereed Paper Research Session: Cyber-law: Maneuvering Through Legal Issues on the Internet

Moderating/Presiding: Velma Brown Blackmon, Elizabeth City State

"Show Me the Money: The Economics of Copyright in Online News," Minjeong Kim, Colorado State

"The convergence policymaking process in South Korea," Dong-Hee Shin, Sungkyunkwan University

"Network Neutrality and Over the Top Content Providers," Rob Frieden, Pennsylvania State

"Motivations for Anonymous Speech: A Legal Realist Perspective," Victoria Ekstrand, Bowling Green State

"Mother Knows Best: Can Lessons From the Ma Bell Breakup Apply to Net Neutrality Policy?" Tom Vizcarrondo, Louisiana State

Discussant: Sheree Martin, Samford

1:30 to 3 p.m.

Refereed Paper Research Session: You Said What?!? Current Issues in Defamation and Obscenity

Moderating/Presiding: Gregory Newton, Ohio

"Gay Labeling and Defamation Law: Have Attitudes Toward Homosexuality Changed Enough to Modify Reputational Torts?: Robert Richards, Pennsylvania State

"Libelous Language Post-Lawrence: Accusations of Homosexuality as Defamation," Laurie Phillips, North Carolina at Chapel Hill*

"Obscenity is in the Eye of the Beholder: Use of Demonstrative Evidence to Delineate Community Standards in Obscenity Cases," Rebecca Ortiz, North Carolina at Chapel Hill**

"Free Speech, Fleeting Expletives & the Causation Quagmire: Was Justice Scalia Wrong In Fox Television Stations," Clay Calvert, Florida and Matthew Bunker, Alabama***

"When Does F*** Not Mean F***?: FCC v. Fox Television Stations and Protecting Emotive Speech," W. Wat Hopkins, Virginia Tech

Discussant: Paul Seigel, Hartford

* First-Place Student Paper

** Third-Place Student Paper

*** First-Place Faculty Paper

Legal Annotated Bibliography

By Michael T. Martinez
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First Amendment

Note (2010). "Overbreadth and Listeners' Rights." 123 *Harvard Law Review* 1749.

According to the conventional understanding of standing doctrine, an individual cannot raise legal challenges unless he can show an injury to a legally protected interest. The doctrine ensures that individuals raise concerns that are both real and their own. An apparent exception to this doctrine is the First Amendment overbreadth doctrine. When a statute proscribes constitutionally protected speech, a party whose speech the statute forbids may level a constitutional challenge against the statute even if the party's own speech could constitutionally be prohibited. The question, therefore, is why the First Amendment should be any different. The answer is that the First Amendment gives all citizens a right to an open and undistorted flow of information. Whenever speech is suppressed, all citizens have a stake in the matter. This means all citizens have a right against overbroad statutes restricting expression.

Campaign Finance

Abraham, J. R. (2010). "Saving Buckley: Creating a Stable Campaign Finance Framework." 110 *Columbia Law Review* 1078.

Since 1976, *Buckley v. Valeo's* contribution-expenditure distinction

has been the touchstone of the campaign finance framework. Currently, lower courts are addressing the constitutionality of contribution limits to independent expenditure committees and some have adopted doctrinal approaches that directly threaten *Buckley's* survival. This article suggests an alternative approach to the independent expenditure committee question that stabilizes campaign finance jurisprudence around *Buckley*. Such an approach will provide future reformers with clear constitutional rules and sufficient flexibility to effectively address campaign finance problems.

Student Speech

Hayes, A. E. (2010). "From Armbands to Douchebags: How *Doninger v. Niehoff* Shows the Supreme Court Needs to Address Student Speech in the Cyber Age." 43 *Akron Law Review* 247.

Avery Doninger, a 16-year-old junior at Lewis S. Mills High School in Connecticut, posted an entry to her LiveJournal.com blog, at home outside of school hours, critical of the administrators at her school. As a result of her posting, the principal barred Doninger from running for Senior Class Secretary. Doninger claimed the punishment was a violation of her First Amendment right of free speech. The United States District Court for the District of Connecticut found that the school did not violate Doninger's constitutional rights and the Second Circuit Court of Appeals affirmed the district court's holding.

The rising use of the Internet has presented a critical First Amendment question unique to public schools: When, if ever, may school administrators punish students for the content of their online speech? The Supreme Court has not yet provided the necessary guidance to decide student cyberspeech cases. Doninger's speech is far different from that in the Court's previous

student speech cases because it originated in her own home outside of school hours, thus lacking a geographical nexus to the school. There is a seeming disconnect between the student expression and any actual disruption to the classroom.

Privacy

Burdon, M. (2010). "Privacy Invasion Geo-Mashups: Privacy 2.0 and the Limits of First Generation Information Privacy Laws." 2010 *University of Illinois Journal of Law, Technology & Policy* 1.

Online technological advances are pioneering the wider distribution of geospatial information for general mapping purposes. The use of popular web-based applications, such as Google Maps, is ensuring that the use of mapping-based applications is becoming commonplace, which has facilitated the rapid growth of geo-mashups. These user-generated creations enable Internet users to aggregate and publish information over specific geographical points. This article identifies privacy-invasive geo-mashups that involve the unauthorized use of personal information, the inadvertent disclosure of personal information and invasion of privacy issues.

Johnson, E. (2010). "Surveillance and Privacy Under the Obama Administration: The Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 and the Attorney General's Guidelines for Domestic FBI Operations." 5 *I/S: A Journal of Law and Policy for Information Society* 419.

President Obama faces the challenge of balancing intelligence gathering and surveillance with civil rights and privacy. This article

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Legal Bibliography (Cont'd from page 8)

discusses the intersection between surveillance and privacy vis-a-vis the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 and the Attorney General's Guidelines for Domestic FBI Operations, two recent documents that serve as a framework for the president's efforts.

Kane, B. (2010). "Balancing Anonymity, Popularity, & Micro-Celebrity: The Crossroads of Social Networking & Privacy." 20 *Albany Law Journal of Science & Technology* 327.

As social networking evolves, a sense of connecting coupled with a fear of being left behind encourages users to actively share information through these sites. The intensity of the pressure cannot be discounted, particularly when considering that 85 percent of Internet users aged 18-34 have visited Facebook, Myspace, or Twitter, and that 84 percent of users of social networking sites aged 18-29 check one of these sites at least once a week. The rise of the Internet and social networking occurred in defiance of conventional business norms. This defiance of norms has extended into the legal and regulatory systems as governments and courts have struggled to address the dynamic environment of the Internet and social networks. The advent of the Internet challenges existing legal structures because technology is not restricted by precedent, statutes, or in many situations any codified regulation. The Internet and social media's rapid evolutionary capacity further defy legal tradition. As outlined within this article, the legal system must become more nimble.

Masson, S. T. (2010). "The Presidential Right of Privacy." 2010 *Boston College Intellectual Property & Technology Forum* 12001.

Although the right of publicity has historically been a cause of action invoked by celebrities to protect themselves from an extensive range of conduct, the question remains whether non-traditional celebrities deserve the same rights. Can President Obama protect against the unauthorized use of his image since he has arguably attained celebrity-like status? This article discusses the application of the right of publicity to President Obama and concludes with suggestions on how he should protect that right.

Libel

McGee, J. B. (2010). "Karen Carpenter v. Westwood One and Tom Leykis: Free Speech, Defamation, and the Intentional Infliction of Emotional Distress – Does Logic Rescue Decency?" 27 *Alaska Law Review* 9.

The relationship between speech protected by the First Amendment and the torts of defamation and intentional infliction of emotional distress (IIED) is a complicated one. This is apparent in the recent Alaska Supreme Court case of *Carpenter v. Westwood One*, which turned on an unusual set of facts involving a national radio talk show host. The Alaska Supreme Court drew a novel distinction between the kind of speech the First Amendment protects from defamation and IIED actions, and other speech that is not protected against such actions. The basis for the court's distinction lies in the difference between speech that makes assertions of fact and speech that does not. This article discusses how the court utilized established principles of logic to support this distinction and how it applied these principles to its decision.

Free Speech

Park, D. W. (2009/2010). "Government Speech and the Public Forum: A Clash Between Democratic

and Egalitarian Values." 45 *Gonzaga Law Review* 113.

For the last quarter century, the public forum doctrine has been the dominant paradigm for resolving questions about the right of access to government property or support. That dominance may be coming to an end as the Supreme Court increasingly relies on and expands the government speech doctrine. Although the government speech doctrine is a relative newcomer to First Amendment jurisprudence, any doubts to its importance were dispelled by the Supreme Court's unanimous embrace of the doctrine over the more established public forum doctrine in the recent case of *Pleasant Grove City v. Summum*.

Pinson, A. A. (2010). "A Bridge Too Far? Directive 1344.10 and the Military's Inroads on Core Political Speech in Campaign Media." 44 *Georgia Law Review* 837.

The military service (or lack thereof) of candidates for political office has long figured prominently into political campaigns. In early 2008, the Department of Defense issued Directive 1344.10, that governs the political campaigns of military members "not on active duty" who, unlike most members on active duty, may seek a partisan political office. With the stroke of a pen, the DoD effectively barred from use on the campaign trail a powerful symbol of many candidates' character, experience and knowledge. Can they do that? After all, the First Amendment protects other symbolic expression, like flag burning. Is wearing a uniform during a political campaign any less communicative? Such a regulation is also likely content-based and therefore subject to strict scrutiny. More important, such expression is "political speech," which has long been considered deserving of the utmost protection.

Collaboration challenges and inspires students

By Dan Kozlowski
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When done well, our free speech courses excite students and encourage them to think critically about the speech rights a democracy needs to thrive. And first-rate programs such as the Liberty Tree Initiative aim to raise First Amendment awareness outside the classroom by bringing speakers and activities onto college campuses generally.

I recently found success, though, championing the First Amendment for students in another way, one that I had never before tried: involving undergraduate students in my research. And not just by asking them to help code or to administer surveys (I don't mean that in a disparaging way; both of those can be worthy means to introduce students to academic research). Instead, I invited students to be my co-authors. I'm so glad that I did, and I recommend others try it as well if an opportunity ever allows for it.

Here's, roughly, how the scenario played out: Near the end of one semester, two of the top students in my undergraduate free speech course came to talk to me. They brought the sort of "complaint"

we teachers wish we uniformly faced: They desperately didn't want the course to end. At no point, by the way, did I naively think this was because I have unparalleled awesomeness in the classroom. These were talented students who found themselves fascinated by and obsessed with First Amendment law. So they asked if I could teach "Free Speech Part II" in the next semester. As a standalone course, that wasn't possible, but I suggested that we could complete an independent study together instead.

I'm enthralled by student speech law, and I always include what inevitably amounts to a fun-filled and discussion-heavy student speech unit in the course. The students, then, already had a basic familiarity with the leading case law and legal issues in the area. I told the students about a research project I planned to begin that would explore how lower courts were interpreting *Morse v. Frederick*.

They were enthusiastic about the project (we had spent a good amount of time talking about *Morse* in class), so I proposed that our primary goal of the independent study could be to work together to complete a research paper. They eagerly agreed.

And so we began, with the students having an integral role in the process. We talked about how to find cases, how to read them thoroughly, and what to look for (generally, citations to and discussion of *Morse*), and we then divvied up the cases under study. I asked the students to summarize each case they read. We then met each week (sometimes more) and talked about what we were finding. Naturally, they had questions – maybe about a term or legal process – but on balance

I was consistently impressed with their command of the case law and its implications.

I also then asked the students to write a portion of the final manuscript. Each student wrote a section of the paper that analyzed a case she had read that merited in-text discussion. We went through a few drafts as I helped hone their analysis and we found a consistent writing voice. Again, though, the quality of their work was exciting.

And the paper proved to be a success. It was accepted for conference presentation and then, later, for publication. The students were giddy. At a graduation ceremony a parent of one of the students told me that working on the paper was the highlight of her daughter's academic experience.

Of course I was thrilled to hear that. I found working with the students to be immensely rewarding. They were astute and energetic, eager to learn and eager to be challenged. Certainly I recognize that the experience couldn't be replicated with every student or with every project. These were exceptional, self-motivated students who came to me with a strong interest in the law (both of them are now in law school).

The experience gave the students an appreciation for the value of legal scholarship. Even more importantly, though, it left them with an even deeper respect and passion for First Amendment rights. Indeed, one of the students now plans to become an education lawyer, where she hopes to convince school officials of the need for robust student speech freedoms. I tell her she can't get started soon enough.



Focus (Cont'd from page 1)

average in this class, Intro to Mass Communications, and a one-hour Communications Orientation class in order to get into the department's journalism, public relations or communications studies majors.

Before the overhaul, the Intro to Mass Comm class touched on the First Amendment, as did our required Media Law class. And while I always put the founders' words in all my journalism course syllabi and harped about it in classes, I didn't delve beyond the rights and responsibilities of a free press. I certainly didn't discuss the two religious freedoms, or how the suffragists used their First Amendment freedoms to secure the right to vote for women.

We do all that in this new class, though we don't spend as much time on religion, petition and assembly as we do on speech and press. But the freedoms work so synergistically – together making a "freedom of conscience" – I think communications students need to hear about the amendment in its entirety.

The midterm and final projects seem to have had the most impact. For the midterm, students have to "Use the First" for something they're passionate about, an idea I got from an AEJMC contest for First Amendment teaching ideas. Several groups in the winter quarter circulated petitions protesting further tuition increases that they forwarded to lawmakers; some even joined a trip to Olympia to protest on the Capitol steps. Other groups raised awareness about human trafficking and petitioned (unsuccessfully) to get Central's late-night "drunk bus" back in action.

For the final project, students have to "Teach the First" to K-12 students. They contact a teacher and develop an age-appropriate lesson plan. Some students had fourth graders writing letters to save fifth grade camp, while others got middle school students debating ratings on video games.

There have been rough spots. One student found that employers sometimes don't appreciate an employee using their First Amendment rights. He was a DJ at the campus radio station and was upset about pending changes to the format. So he and another DJ got 400 signatures on a petition protesting the changes. But when he surprised his bosses by presenting it at a meeting, they felt blindsided and, for a bit, the employee feared for his job. He kept it, but next time I'll counsel a student to either bring their employer into the loop or be prepared for a fight. (It's also a great opportunity to talk about the *Garcetti v. Ceballos* case, which chipped away at employees' free speech rights on the job.)

Another effort fell short largely because of students' misunderstanding of First Amendment law. Our student union allows free tables for official student clubs and academic departments to conduct fundraisers or advocate for issues. But some class members were alarmed to find that other students had to pay. So they circulated a petition, then proposed a change to the union's operating board.

The board's adviser and the student government president feared they wouldn't be able to hold the random student accountable. But despite support from the committee's student chair, the petitioners only managed to get a clause allowing students free tabling if it was connected to a class (which gained nothing, as that right was assumed under the tabling rights for departments). What was just as upsetting was that the most talkative student didn't grasp "content neutrality." He kept saying that any *student* who got a table would have to be "content neutral." Since it was their project and not mine, I suffered in silence while he kept repeating this. (He didn't get a good grade on the project, nor did his colleagues, none of whom corrected him.)

So far, a colleague and I have taught about 200 students. The student evaluations have been uniformly strong. "I now want to exercise my F.A. rights more and am more passionate about using my rights," wrote one of my fall students. In winter quarter, another wrote, "I believe it should be taught extensively from elementary school through college. It is empowering to learn about."

More gratifying were the students who told me that in the months after the class, they thought about and debated the news differently, paid much closer attention to First Amendment issues and found themselves educating others when they got a chance.

One student, who admits he's never had any patience for "religious nuts, homophobes and most Republicans," told me he doesn't dismiss their views so quickly anymore. "I now find myself saying, 'Well they have every right to believe what they do and express it to the world,'" he wrote in an e-mail.

"Though I still disagree, I've learned that I have to afford them the same liberties I would hope for. That's probably been the hardest lesson I've taken from 202, but arguably, the most beneficial."

So while I'm glad the students leave able to list the amendment's six freedoms, I'm even happier they've become more open and tolerant. Given the generally shabby level of public discourse right now, I think the ability of our students to engage the world's problems with both passion and an ability to hear and weigh the other side may be the most important First Amendment lesson of all.

Cynthia is happy to share her course pack bibliography, syllabus, reading schedule and assignment guidesheets. She'd also love to hear from any others who are teaching First Amendment classes.

Head Notes (Cont'd from page 1)

since the government promised improved media access.

SPJ, the Reporters Committee for Freedom of the Press, the Society of Environmental Journalists, the National Freedom of Information Coalition and the ACLU, among many others, have been working to ease the restrictions, but these groups can't do as good a job without the assistance of the public – and that's

where media law professors come in.

I have always combined advocacy with scholarship on First Amendment issues. To me, it's an easy call: I have to walk the walk to talk the talk, and I feel strongly that the responsible exercise of my First Amendment rights is the single most important way to convey to students how seriously I take the issues I teach.

Whether it's local, national or international issues that motivate you,

I urge you all to pick a cause, and a group, and get involved. You'll deepen your resources, generate fresh "war stories" and make lots of great friends who can enliven your classroom. Better yet, you'll position yourself as the local expert on First Amendment issues, bringing recognition and stature to your university.

Media law professors make eloquent defenders of the First Amendment. Let's all make some noise!

Thanks for your help!

This is the last issue of the newsletter I will edit, so I'd like to thank everyone – both officers and other division members – who have helped me fill these pages by contributing content for Volume 38. I'd especially like to thank Mike Martinez of the University of Missouri for compiling the legal bibliography for each issue – his compilations of recent research have made it a little easier for all of us to keep up with the literature in our field.

— Kathy Olson, editor

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